

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:05CV238-MU-02

KENNETH EDGAR PATTON,)
Plaintiff,)
)
v.) ORDER
)
DAVID MITCHELL, Supt., et al.)
Defendants.)
_____)

THIS MATTER comes before the Court on plaintiff's civil rights Complaint under 42 U.S.C. §1983, filed June 20, 2005; and on the defendants' Answer, filed August 17, 2005.

Inasmuch as the defendants' Answer sets forth several affirmative defenses to the plaintiff's allegations, the same shall be construed as a motion to dismiss. Further, after careful review of the defendants' de facto motion to dismiss, the Court further finds that the defendants may be entitled to a summary dismissal of the instant Complaint as a matter of law.

PLAINTIFF PATTON PLEASE READ THIS:

You now have the opportunity to respond to the defendants' motion. You may not allege new facts surrounding the events in question as part of your response. You should base your response and argument(s) solely on the matters set forth in your original Complaint and/or those set forth in the defendants' motion to dismiss.

You are further advised that you have thirty (30) days from the filing of this Order in which to file your response in opposition to the defendants' motion to dismiss. **FAILURE TO RESPOND WITHIN THIS TIME PERIOD MAY SUBJECT THIS ACTION TO DISMISSAL.**

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That the plaintiff has thirty (30) days from the filing of this Order in which to provide a response to the defendants' motion to dismiss; and
2. That the Clerk shall send copies of this Order to the plaintiff and to counsel for the defendants.

SO ORDERED.

Signed: September 15, 2005



A handwritten signature in black ink, appearing to read "Graham C. Mullen", is written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

